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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,857	12/01/2003	Sharon Lesk	7288-102/10312532	2832
167	7590	12/14/2005	EXAMINER	
FULBRIGHT AND JAWORSKI LLP 555 S. FLOWER STREET, 41ST FLOOR LOS ANGELES, CA 90071			GEHMAN, BRYON P	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 12/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/725,857

Applicant(s)

LESK ET AL.

Examiner

Bryon P. Gehman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 13 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. **The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided.** The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

2. The abstract of the disclosure is objected to because it contains legal phraseology in line 3, "means". Correction is required. See MPEP § 608.01(b).
3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the claimed frog of claim 3 must be shown or the feature canceled from the claims. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate

changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1-9 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. It is unclear from the specification or the claims what constitutes plural "sides" of a frustoconical surface as disclosed.

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1 and 4-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Ho (5,947,322). Claims 1 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Maher (3,973,316). Claims 1, 4 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Borah (2,963,256). Each discloses a container comprising a receptacle (1; 10; 54; respectively) adapted to be received in a motor vehicle drink holder (see column 1, lines 19-32; as a cup, inherently; see column 1, lines 14-22), the receptacle comprising a closed bottom, a top with an opening and a frustoconical side, and means (inside of the receptacle) for supporting a plant stem.

As to claim 4, Ho and Borah each discloses a ring (2; 50).

As to claims 5 and 6, Ho discloses the ring (2) as detachable and grooved to secure to the receptacle.

As to claim 7, each discloses the container configured to stand on its own when removed from a drink holder.

8. Claim 10 is rejected under 35 U.S.C. 102(b) as being anticipated by either one of Ho and Borah. Each discloses inserting a plant part into a container (1 or 2; 54) and placing the container in a motor vehicle drink holder (3 or 1; 12).

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over any one of Ho, Maher and Borah in view of Sakamoto (3,477,175). Sakamoto discloses a plant stem supporting means comprising a set of prongs (24) disposed in a plant stem receptacle. To modify any of the plant containers of Ho, Maher and Borah employing the prongs of Sakamoto would have been obvious in order to support the plant stems, as suggested by Sakamoto.

11. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over any one of Ho, Maher and Borah in view of Luiperseek (1,633,184). Luiperseek discloses a plant stem supporting means comprising a set of prongs (18, 23) disposed in a plant stem receptacle. To modify any of the plant containers of Ho, Maher and Borah employing the prongs of Luiperseek would have been obvious in order to support the plant stems, as suggested by Luiperseek.

12. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over any one of Ho, Maher and Borah in view of Stone (2,057,856). Stone discloses a plant stem supporting means comprising a frog (10). To modify any of the plant containers of Ho, Maher and Borah employing the frog of Stone would have been obvious in order to support the plant stems, as suggested by Stone.

13. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ho in view of Sakamoto. Ho has been explained above. Sakamoto discloses a plant stem supporting means comprising a set of prongs (24) disposed in a plant stem receptacle. To modify the plant container of Ho employing the prongs of Sakamoto would have been obvious in order to support the plant stems, as suggested by Sakamoto.

14. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over any one of Ho in view of Luiperseek. Ho has been explained above. Luiperseek discloses a plant stem supporting means comprising a set of prongs (18, 23) disposed in a plant stem receptacle. To modify the plant container of Ho employing the prongs of Luiperseek would have been obvious in order to support the plant stems, as suggested by Luiperseek.

15. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over either one of Ho and Borah. Ho and Borah each disclose locating the plant container in a motor vehicle drink holder. To subsequently remove the plant container from the drink holder to display the plant container externally of the motor vehicle would have been an obvious manipulation to one of ordinary skill in the field of using plant containers.

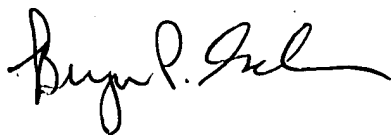
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16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Reynolds et al. also disclose a frog.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryon P. Gehman whose telephone number is (571) 272-4555. The examiner can normally be reached on Monday through Wednesday from 5:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu, can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Bryon P. Gehman  
Primary Examiner  
Art Unit 3728

BPG